

FILED

IN THE COURT OF APPEALS OF TENNESSEE

March 18, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JAMES CECIL HERRON	:	HAWKINS CIRCUIT
	:	CA No. 03A01-9510-CV-00368
Plaintiff-Appellee	:	
	:	
	:	
vs.	:	HON. JAMES BECKNER
	:	JUDGE
	:	
SONJA MARIE HERRON	:	
	:	
Defendant-Appellant	:	AFFIRMED AND REMANDED

MARK H. TOOHEY, OF KINGSPORT, TENNESSEE, FOR APPELLANT
KENDALL T. LAWSON, OF ROGERSVILLE, TENNESSEE, FOR APPELLEE

MEMORANDUM OPINION

Sanders, Sp.J.

The Defendant has appealed from a judgment awarding the custody of the parties' two minor children to the Plaintiff in their divorce proceeding. We affirm.

The Plaintiff-Appellee, James Herron, and Defendant-Appellant Sonja Herron were married in 1985. At the time of their marriage the wife was 19 years of age and the husband was 22. Two children were born to the marriage, Angela

Herron, born in August, 1989, and Jessica, born in March, 1993.

In May, 1994, the husband (James) filed suit against the wife (Sonja) for a divorce, alleging adultery. The wife, for answer, admitted having an affair but denied Plaintiff was entitled to a divorce in that his conduct toward Defendant and treatment of her had "been outrageous and angerous, including threatening her with a gun, ramming the vehicle she was riding in with Plaintiff's...vehicle, and otherwise threatening Defendant...with serious bodily injury or death...."

Upon the trial of the case, the only issue was the custody of the children. The marriage was hopelessly broken and the parties had divided their properties. The wife admitted an adulterous relationship with two other men during the marriage and the proof showed the husband had physically abused his wife.

The trial court, in his determination of the case, awarded the husband a divorce on grounds of adultery. In awarding the custody of the children, however, he did not base his decision on which of the parties was most at fault for the divorce, but which of the parties would provide the best home environment for the children. He resolved this issue in favor of the husband, with liberal visitations to the wife.

The wife has appealed, presenting the single issue for review that it was error for the court to award the custody of the minor children to the Plaintiff.

We cannot say the evidence preponderates against the holding of the trial court, and affirm in accordance with Court of Appeals Rule 10(a)¹.

The cost of this appeal is taxed to the Appellant and the case is remanded to the trial court for any further necessary proceedings.

Clifford E. Sanders, Sp.J.

CONCUR:

Herschel P. Franks, J.

Don T. McMurray, J.

¹. **Affirmance Without Opinion.**--The Court, with the concurrence of all judges participating in the case, may affirm the action of the trial court by order without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

(1) the Court concurs in the facts as found or as found by necessary implication by the trial court.

(2) there is material evidence to support the verdict of the jury.

(3) no reversible error of law appears.

Such cases may be affirmed as follows: "Affirmed in accordance with Court of Appeals Rule 10(a)."